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No. 5 Orig.
O. T. 1907

~~No. 13, Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, COMPLAINANTS,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

MOTION TO SET DOWN FOR HEARING ON PRELIMINARY QUESTIONS OF LAW, WITHOUT PREJUDICE, ETC.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, Complainants,
v.
JOHN F. SHIPP AND OTHERS, Defendants.
} No. 12, Original.

MOTION TO SET DOWN FOR HEARING ON PRELIMINARY QUESTIONS OF LAW, WITHOUT PREJUDICE, ETC.

The Attorney-General calls up this information in contempt and shows the court that the answers of all the defendants are now on file, excepting the answer of Paul Pool, who has not been located and was not served with process and seems to be a fugitive.

The answers in general set up an alibi or deny connection with the mob or knowledge of its formation, and plead not guilty. Certain of the answers also rely upon the contention that this court had no jurisdiction of the Johnson case. The answer of Shipp and his deputies prays that the information be dismissed as against them, because the Circuit Court of the United States had no right or authority to entertain Johnson's petition for

habeas corpus, and that consequently the order of the Circuit Court dismissing the petition was not appealable to this court.

These averments and contentions raise the question of the jurisdiction to entertain Johnson's case in the Circuit Court and in this court, and consequently the question of the jurisdiction of this court in this proceeding and other related preliminary questions of law.

The Attorney-General therefore respectfully suggests that the court set the case down for hearing under the information and answers upon these preliminary questions of law, and further suggests that the court shall, if it sees fit, define the nature and scope of these questions for discussion in the briefs and at the oral argument. Further, the Attorney-General expressly states that this application to set the case down for hearing is made without prejudice to the right of the Government to proceed thereafter as it may be entitled to do and as it may be advised, upon the merits of the case, by taking testimony under the claims of alibi and the pleas of not guilty, thereafter presenting the case for final hearing and determination upon the issues of fact thus made.

The Attorney-General also suggests that the preliminary hearing on the questions of law, for which application is now made, be set for December 3 next at the head of the call for that day, and that in any order which the court may now see fit

to make in the premises it will frame the order so as to operate without prejudice to the ulterior progress of the case on the merits.

WILLIAM H. MOODY,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

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